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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,283	09/15/2000	Daniel Meilhon	6219-0012	9760
21967	7590	07/15/2004		
HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, N.W. SUITE 1200 WASHINGTON, DC 20006-1109			EXAMINER CHEN, VIVIAN	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/601,283	MEILHON, DANIEL	
	Examiner	Art Unit	
	Vivian Chen	1773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 and 31-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. The claim objection in paragraph 2 of the previous Office Action has been withdrawn in view of Applicant's amendments filed 4/20/2004.

Claim Rejections - 35 USC § 103

2. Claims 18-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over WINTER (US 4,705,707) in view of PETKE ET AL (US 4,554,303) as presented in the previous Office Action.

WINTER '707 discloses a symmetrical five layer film having a CBABC structure and suitable for wrapping and packaging applications, wherein layer "A" is polyethylene and layer "C" is a heat-sealable copolyester, wherein layer "A" is 30-90 wt% of the film, and layer "C" comprises 5-40 wt% of the film, the film having a typical total thickness of 1.9 mil (Figure 2; lines 44-53, col. 4; lines 55-68, col. 6; lines 16-30, col. 9; lines 45-50, col. 10; line 65, col. 16 to line 9, col. 17; Example 7) as recited in claims 18-24, 30. The copolyester layers optionally contain slip and antiblocking agents (lines 50-55, col. 6) as recited in claim 28. However, the reference does not explicitly disclose the recited copolyester.

PETKE ET AL '303 discloses that it is well known in the art to use semi-crystalline or amorphous copolyesters comprising 40-100 mol% ethylene terephthalate and up to 60 mol% of another diacid such as isophthalic acid and up to 60 mol% of another diol such as cyclohexane

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dimethanol as heat seal layers for packaging films (lines 14-15, col. 1; line 57, col. 2 to line 68, col. 3) as recited in claims 18, 25-27 in order to form articles with durable heat seals.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use known heat-sealable copolyester resins as disclosed in PETKE ET AL '303 as the outer layers of the WINTER '707 film in order to obtain durable, rupture resistant packaging and wrapping materials. One of ordinary skill in the art would have applied conventional metallic or print layers to the film (claim 29) in order to obtain specific decorative effects and/or convey package information. One of ordinary skill in the art would reasonably believe that the disclosed films are capable of substantially retaining a shape (i.e., substantially retaining a fold, crease, etc.) under certain conditions; therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594.

3. Claims 18-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over WINTER (US 4,716,061) in view of PETKE ET AL (US 4,554,303) as presented in the previous Office Action.

WINTER '061 discloses a symmetrical five layer film having a CBABC structure and suitable for wrapping and packaging applications, wherein layer "A" is polypropylene (co)polymer and layer "C" is a copolyester, wherein layer "A" is 30-90 wt% of the film, and layer "C" comprises 5-40 wt% of the film, the film having a typical total thickness of 1.9 mil (Figure 2; lines 5-18, col. 6; lines 45-68, col. 6; lines 9-27, col. 9; lines 37-48, col. 15; Example 6) as recited in claims 18-22, 24, 30. The copolyester layers optionally contain slip and

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antiblocking agents (lines 40-45, col. 6) as recited in claim 28. However, the reference does not explicitly disclose the recited copolyester.

PETKE ET AL '303 discloses that it is well known in the art to use semi-crystalline or amorphous copolyesters comprising 40-100 mol% ethylene terephthalate and up to 60 mol% of another diacid such as isophthalic acid and up to 60 mol% of another diol such as cyclohexane dimethanol as heat seal layers for packaging films (lines 14-15, col. 1; line 57, col. 2 to line 68, col. 3) as recited in claims 18, 25-27 in order to form articles with durable heat seals.

It would have been obvious to a person of ordinary skill in the art at the time the It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use known heat-sealable copolyester resins as disclosed in PETKE ET AL '303 in the outer layers of the WINTER '061 film in order to obtain durable, rupture resistant packaging and wrapping materials. It also would have been obvious to use commercially available ethylene-propylene copolymers (claim 23) for the core layer depending on the specific mechanical, chemical, or other physical properties desired for a given end use. One of ordinary skill in the art would have applied conventional metallic or print layers to the film (claim 29) in order to obtain specific decorative effects and/or convey package information. One of ordinary skill in the art would reasonably believe that the disclosed films are capable of substantially retaining a shape (i.e., substantially retaining a fold, crease, etc.) under certain conditions; therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594.

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4. Claims 18-24, 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over WINTER (US 4,705,707) in view of PETKE ET AL (US 4,352,925) as presented in the previous Office Action.

WINTER '707 discloses a symmetrical five layer film having a CBABC structure and suitable for wrapping and packaging applications, wherein layer "A" is polyethylene and layer "C" is a heat-sealable copolyester, wherein layer "A" is 30-90 wt% of the film, and layer "C" comprises 5-40 wt% of the film, the film having a typical total thickness of 1.9 mil (Figure 2; lines 44-53, col. 4; lines 55-68, col. 6; lines 16-30, col. 9; lines 45-50, col. 10; line 65, col. 16 to line 9, col. 17; Example 7) as recited in claims 18-24, 30. The copolyester layers optionally contain slip and antiblocking agents (lines 50-55, col. 6) as recited in claim 28. An illustrative example of a suitable copolyester is KODABOND 5116 which is derived from terephthalic acid, ethylene glycol, and diethylene glycol (Example 1).

PETKE ET AL '925 discloses that it is well known in the art to use amorphous copolyesters comprising derived from terephthalic acid, ethylene glycol, and diethylene glycol as heat-resistant heat seal layers for laminates (lines 21-30, col. 2; lines 20-28, col. 3; Example 1) as recited in claims 18 in order to form articles with durable heat seals.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use known, commercially available heat-sealable copolyester resins as disclosed in PETKE ET AL '925 as the outer layers of the WINTER '707 film in order to obtain durable, rupture resistant packaging and wrapping materials. One of ordinary skill in the art would have applied conventional metallic or print layers to the film (claim 29) in order to obtain specific decorative effects and/or convey package information. One of ordinary skill in the art

would reasonably believe that the disclosed films are capable of substantially retaining a shape (i.e., substantially retaining a fold, crease, etc.) under certain conditions; therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594.

5. Claims 18-24, 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over WINTER (US 4,716,061) in view of PETKE ET AL (US 4,352,925) as presented in the previous Office Action.

WINTER '061 discloses a symmetrical five layer film having a CBABC structure and suitable for wrapping and packaging applications, wherein layer "A" is polypropylene (co)polymer and layer "C" is a copolyester, wherein layer "A" is 30-90 wt% of the film, and layer "C" comprises 5-40 wt% of the film, the film having a typical total thickness of 1.9 mil (Figure 2; lines 5-18, col. 6; lines 45-68, col. 6; lines 9-27, col. 9; lines 37-48, col. 15; Example 6) as recited in claims 18-22, 24, 30. The copolyester layers optionally contain slip and antiblocking agents (lines 40-45, col. 6) as recited in claim 28. An illustrative example of a suitable copolyester is KODABOND 5116 which is derived from terephthalic acid, ethylene glycol, and diethylene glycol (Example 1).

PETKE ET AL '925 discloses that it is well known in the art to use amorphous copolyesters comprising derived from terephthalic acid, ethylene glycol, and diethylene glycol as heat-resistant heat seal layers for laminates (lines 21-30, col. 2; lines 20-28, col. 3; Example 1) as recited in claims 18 in order to form articles with durable heat seals.

It would have been obvious to a person of ordinary skill in the art at the time the It would have been obvious to a person of ordinary skill in the art at the time the invention was made to

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use known, commercially available heat-sealable copolyester resins as disclosed in PETKE ET AL '925 in the outer layers of the WINTER '061 film in order to obtain durable, rupture resistant packaging and wrapping materials. It also would have been obvious to use commercially available ethylene-propylene copolymers (claim 23) for the core layer depending on the specific mechanical, chemical, or other physical properties desired for a given end use. One of ordinary skill in the art would have applied conventional metallic or print layers to the film (claim 29) in order to obtain specific decorative effects and/or convey package information. One of ordinary skill in the art would reasonably believe that the disclosed films are capable of substantially retaining a shape (i.e., substantially retaining a fold, crease, etc.) under certain conditions; therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594.

Response to Arguments

6. Applicant's arguments filed 4/20/2004 have been fully considered but they are not persuasive.

(A) Applicant argues that the WINTER references fail to disclose the claimed invention because the prior art films contain five layers. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a film containing only three layers) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The present claims only require two outer layers and a middle

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(i.e., core) layer, but the present claim language does not preclude the presence of additional layers as long as the requirement of symmetrical construction and composition is met.

(B) Applicant argues that the PETKE ET AL references fail to disclose amorphous or very low crystallinity surface layers. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., amorphous outer layers) are not recited in a majority of the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In regard to the claims explicitly requiring outer layers containing amorphous polyester (claims 19-20), the present claim language merely requires the presence of an amorphous polyester in the outer layer, but does not require that the outer layers themselves to be amorphous. Since the PETKE ET AL references clearly disclose compositions containing an amorphous polyester component, with the amorphous polyester having the recited compositions, the fact that the compositions are crystallizable is irrelevant. Furthermore, the compositions of the PETKE ET AL references would be substantially amorphous (e.g., immediately after extrusion or molding) prior to specific treatment to induce crystallization.

(C) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a film for twist wrapping articles) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). One of

ordinary skill in the art would reasonably believe that packaging films made from the material of the WINTER references are capable of substantially conforming to the objects being packaged with the use of conventional packaging methods. Applicant has not provided any probative evidence to the contrary.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivian Chen whose telephone number is (571) 272-1506. The examiner can normally be reached on Monday through Thursday from 8:30 AM to 6 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (571) 272-1516. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

The General Information telephone number for Technology Center 1700 is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 08, 2004


Vivian Chen
Primary Examiner
Art Unit 1773